

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JEREMY HOWELL,
Plaintiff

v.

AUSTIN INDEPENDENT SCHOOL
DISTRICT, and JAMES JOHNSTON,

Defendants

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Civil Action No. A07CA 017SS

Jury Demanded

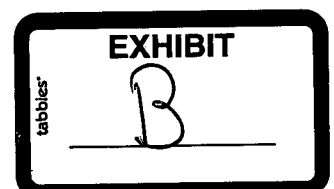
AFFIDAVIT OF KEVIN W. COLE

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary public, on this day personally appeared Kevin W. Cole, known to me to be the person whose name is subscribed to the following instrument, and who having been duly sworn upon his oath deposed and stated as follows:

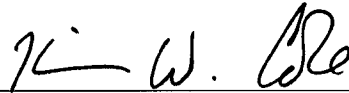
“My name is Kevin W. Cole. I am over 21 years of age, and am a resident of Austin, Texas. I have never been convicted of a felony. I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated, which are true and correct.

1. I am one of the designated custodians of records for Cole & Powell, P.C. I am also the counsel of record for Defendant Austin Independent School District in the above-referenced litigation.
2. Attached hereto is email correspondence between myself and the attorneys of record for Jeremy Howell in the above-referenced litigation, i.e. Randal Mathis and Erin Dixon.
3. The foregoing records were produced and/or kept in the regular course of business, and it was the regular course of business of Cole & Powell, P.C. for an employee or representative of Cole & Powell, P.C. with the personal knowledge of the act, event, or condition recorded to make the memorandum or record; or to transmit information hereof to be included in such memorandum or record; and the memorandum or



record was made at or near the time of the act, event, or condition, or reasonably soon thereafter. The records attached hereto are exact duplicates of the original.

FURTHER AFFIANT SAYETH NOT.”

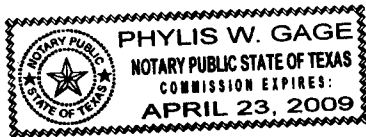


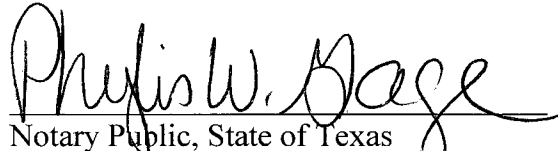
Kevin W. Cole

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary public, on this day personally appeared **Kevin W. Cole** who being by me duly sworn, on her oath deposed and said that he has read the above and foregoing affidavit; and that every statement contained therein is true and correct and within his personal knowledge.

SWORN TO AND SUBSCRIBED BEFORE ME on this the 7th day of February 2008, to certify which witness my hand and official seal.





Notary Public, State of Texas

From: Kevin W. Cole
To: "Randal Mathis";
Subject: RE: Howell v. AISD - Confidential
Date: Thursday, January 24, 2008 5:21:00 PM

Randy,

I just reviewed your message and I am checking into this allegation. When was this conversation between Cathy Bennett and Ms. Calvert alleged to have occurred?

Kevin W. Cole
Cole & Powell, P.C.
400 W. 15th Street
Suite 304
Austin, Texas 78701
512.482.0003 Tel.
512.482.0013 Fax

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-----Original Message-----

From: Joy Whitney [<mailto:JWhitney@mathisdonheiser.com>] On Behalf Of Randal Mathis
Sent: Thursday, January 24, 2008 3:46 PM
To: Kevin W. Cole (E-mail)
Subject: Howell v. AISD - Confidential
Sensitivity: Confidential

Personal and Confidential

Dear Kevin:

I need to raise a sensitive issue with you. Cathy Bennett, who, as you know, I previously deposed in this case, has told Jeremy's mother that Johnston is HIV

positive. Do you know if that is true, do you know why Cathy Bennett, as an employee of the District, and the District itself, have not notified us of this? Were you previously aware of it?

This is very important, and I would appreciate a straight answer from everybody concerned without my having to re-notice depositions or serve Interrogatories to be answered under oath.

If this is true, and if the District knew it and failed to notify Jeremy and my office, knowing full well the nature of Jeremy's report concerning sexual contact with Johnston, we are going to likely have a very different lawsuit. I believe this case needs to get settled. Please let me hear from you and please be specific about when the school district or any of its employees learned of this fact, if what I am being told Cathy Bennett said is correct.

How in the world could Ms. Bennett have sat there in a deposition with me, as Jeremy's lawyer, and not told me that so that I could, in turn, have the appropriate conversation with Jeremy and, of course, his girlfriend?

> Randal Mathis
> Mathis & Donheiser, P.C.
> 4600 Trammell Crow Center
> 2001 Ross Avenue
> Dallas, TX 75201
> Tel: 214-661-8915
> Fax: 214-303-0399
> rmathis@mathisdonheiser.com

> _____
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From: Kevin W. Cole
To: "Randal Mathis";
Subject: RE: Howell v. AISD
Date: Thursday, January 24, 2008 5:26:00 PM

Randy,

As I said in my response to your earlier e-mail, I am checking into your recent allegation. Nonetheless, I am certain that our client will oppose your request to amend the complaint, and will oppose having this case proceed under the designation "John Doe." Any specific information that you can provide related to your recent allegation would be tremendously helpful in terms of our being able to evaluate the appropriateness of your request for a conference with the judge. Thanks.

Kevin W. Cole
Cole & Powell, P.C.
400 W. 15th Street
Suite 304
Austin, Texas 78701
512.482.0003 Tel.
512.482.0013 Fax

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-----Original Message-----

From: Joy Whitney [<mailto:JWhitney@mathisdonheiser.com>] On Behalf Of Randal Mathis
Sent: Thursday, January 24, 2008 3:47 PM
To: Kevin W. Cole (E-mail)
Subject: Howell v. AISD
Sensitivity: Confidential

Personal and Confidential

Kevin:

Just a quick follow-up to my e-mail a minute ago.

Over the next few days, I am going to have to decide what to do about amending our Complaint. I imagine that I am going to need to make some individual claims, at least against Cathy Bennett, and in view of developments, this case needs to be designated as "John Doe" rather than with Jeremy's real name. What is your position going to be about adding parties and about how we can reclassify the case as a "John Doe"? If any of these other school officials knew, I may very well want to add them individually as well because I think there was clearly a duty to notify Jeremy.

Maybe the best thing would be to ask for a conference with the judge so that the situation could be explained privately in chambers and so that we can obtain the Court's guidance in how to proceed with this in a way that protects everyone's privacy as might be appropriate under this circumstance.

I look forward to hearing from you.

Thanks,
RM

> Randal Mathis
> Mathis & Donheiser, P.C.
> 4600 Trammell Crow Center
> 2001 Ross Avenue
> Dallas, TX 75201
> Tel: 214-661-8915
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From: Kevin W. Cole
To: "Erin Dixon";
cc: "Randal Mathis";
Subject: RE: Howell v. AISD et al.
Date: Thursday, January 24, 2008 5:38:00 PM

Erin,

Please confer with Randy about my responses to the e-mails that he sent to me this afternoon. Until we are able to investigate this new allegation that you all are making, we will not be agreeing to present Ms. Bennett to be re-deposed. It would be tremendously helpful to know when Ms. Bennett is alleged to have spoken with Ms. Calvert. You might recall that Jeremy Howell testified in his deposition that he was tested for sexually transmitted diseases "very promptly after James was found out," and that he did not have any sexually transmitted diseases. Please help me put your new allegation into some context relevant to this litigation. Thanks.

Kevin W. Cole
Cole & Powell, P.C.
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-----Original Message-----

From: Erin Dixon [<mailto:edixon@mathisdonheiser.com>]
Sent: Thursday, January 24, 2008 4:24 PM
To: Kevin Cole (E-mail)
Subject: Howell v. AISD et al.

Kevin,

Randy would like to re-depose Cathy Bennett before the discovery cut-off on February 8. He will be in Austin on January 31, and could do the deposition at your office at 10:30. Please let me know if you are available to do the deposition at that time.

Thanks,
Erin Dixon

Erin C. Dixon
Mathis & Donheiser, P.C.
4600 Trammell Crow Center
2001 Ross Avenue
Dallas, TX 75201
Tel: 214-661-8926
Fax: 214-303-0399
edixon@mathisdonheiser.com

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From: Kevin W. Cole
To: "Randal Mathis"; "Erin Dixon";
Subject: RE: Howell v. AISD et al.
Date: Friday, January 25, 2008 11:33:00 AM

Mr. Mathis,

Let me be very clear with you. I do not know what whether what you allege is true at all. Moreover, I do not know how your allegation is relevant to this lawsuit. After investigating your allegation, I still have no reason to believe that it is true. I personally have no reason to suspect or believe that James Johnston is HIV positive. Now, with the above information, do what you must to represent your client. I will do the same. Finally, please do not send anymore e-mails to me like your e-mail below.

Kevin W. Cole
Cole & Powell, P.C.
400 W. 15th Street
Suite 304
Austin, Texas 78701
512.482.0003 Tel.
512.482.0013 Fax

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-----Original Message-----

From: Randal Mathis [<mailto:RMathis@mathisdonheiser.com>]
Sent: Friday, January 25, 2008 11:06 AM
To: Kevin W. Cole; Erin Dixon
Subject: RE: Howell v. AISD et al.

Kevin - I am checking on the date of the conversation and will let you know. You did not answer my question about whether you knew before my email to you. I believe anyone affiliated with the school, including you, had a legal, not to mention moral, duty to inform us in view of my clients claims. I expect to submit an amended complaint and will likely add Ms.Bennett individually. That is why I need to redepose her. If she knew how did she know it and does she know who else knew. This may turn out to be the worst conduct from a school I have ever seen. If you knew I think you are disqualified from the case. I hope you did not know.

Randal Mathis
Mathis & Donheiser, P.C.
4600 Trammell Crow Center
2001 Ross Ave.
Dallas, TX 75201
(214) 661-8915

Fax: (214) 303-0399

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-----Original Message-----

From: Kevin W. Cole [<mailto:kevin@colenpowell.com>]

Sent: Thursday, January 24, 2008 5:39 PM

To: Erin Dixon

Cc: Randal Mathis

Subject: RE: Howell v. AISD et al.

Erin,

Please confer with Randy about my responses to the e-mails that he sent to me this afternoon. Until we are able to investigate this new allegation that you all are making, we will not be agreeing to present Ms. Bennett to be re-deposed. It would be tremendously helpful to know when Ms. Bennett is alleged to have spoken with Ms. Calvert. You might recall that Jeremy Howell testified in his deposition that he was tested for sexually transmitted diseases "very promptly after James was found out," and that he did not have any sexually transmitted diseases. Please help me put your new allegation into some context relevant to this litigation. Thanks.

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From: Erin Dixon [<mailto:edixon@mathisdonheiser.com>]

Sent: Thursday, January 24, 2008 4:24 PM

To: Kevin Cole (E-mail)

Subject: Howell v. AISD et al.

Kevin,

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Thanks,
Erin Dixon

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edixon@mathisdonheiser.com

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